

Remarks

The Office Action dated March 4, 2010 notes the following rejections: claims 1-4 and 24 stand rejected under 35 U.S.C. § 103(a) over Vilppula *et al.* (U.S. Patent Pub. 2002/0019698) in view of Maanoja *et al.* (U.S. Patent Pub. 2004/0259566) and in further view of Roel-Ng *et al.* (U.S. Patent No. 6,002,936); claims 6-9 stand rejected under 35 U.S.C. § 103(a) over the '698, '566 and '936 references and further in view of Ludwig (U.S. Patent No. 6,256,498); claims 10-11, 13, 15-17 and 22-23 stand rejected under 35 U.S.C. § 103(a) over the '698 reference in view of the '566 reference; claims 18-20 stand rejected under 35 U.S.C. § 103(a) over the '698 and '566 references in view of Yabe *et al.* (U.S. Patent Pub. 2003/0013458); and claim 21 stands rejected under 35 U.S.C. § 103(a) over the '698, '566 and '936 references in view of the '458 reference. In this discussion set forth below, Applicant does not acquiesce to any rejection or averment in this Office Action unless Applicant expressly indicates otherwise.

Applicant traverses the § 103(a) rejections of claims 1-4, 6-11, 13, and 15-23. All of the § 103(a) rejections rely on the '566 reference, which Applicant asserts does not qualify as prior art. The Office Action fails to recite under which provision of § 102 the Office Action is qualifying the '566 reference as prior art. However, it appears that regardless of which provision of § 102, the '566 reference does not qualify as prior art. Specifically, the '566 reference was first published on December 23, 2004, which is not more than one year before Applicant's effective filing date of June 14, 2002 (via PCT/IB02/03181). *See, e.g.*, M.P.E.P. §§ 706.02 and 189.03(b). In addition, the PCT filing date of the '566 reference is August 28, 2002, which is after Applicant's priority date of at least June 14, 2002. Therefore, the '566 reference would not qualify as prior art under other subsections of § 102. *See, e.g.*, M.P.E.P. § 2136.03. Accordingly, the § 103(a) rejections of claims 1-4, 6-11, 13 and 15-23, based in part on the '566 reference, must be withdrawn.

More specifically, the Office Action acknowledges on page 5 that the primary '698 reference fails to "explicitly disclose that the order is based on selecting context-corresponding position determination device selection process." The '566 reference was cited to teach this limitation, and none of the other cited references make up for this

deficiency. Accordingly, the § 103(a) rejections of claims 1-4, 6-11, 13, and 15-23 are improper and must be withdrawn.

Further, Applicant respectfully traverses the rejections of claims 1-4, 6-9, 21 and 24 that rely upon the combination of the '698 reference with that of the '936 reference because the combination is illogical. The two references teach two very different applications, and thus, the aspects taken from the '936 reference do not make sense in the context of the '698 reference. The '698 reference is directed towards a single locator device that can have multiple positioning mechanisms. The '936 reference is directed toward a cellular communication system in which a base-station controller needs to acquire positions of the cellular phones in the various cells. Applicant submits that simply equating functionality associated with a base station within a cellular system (the '936 reference) with that of a small locator device (the '698 reference) ignores the context of the references. Thus, while a base-station controller may be taught to activate a cellular phone, Applicant submits that the skilled artisan would not look to these disparate teachings and would not apply base-station controller functions to those of a single locator device of the '698 reference.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, David Schaeffer, of NXP Corporation at (212) 876-6170 (or the undersigned).

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